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BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOHN S. PEREIRA, as Chapter 7 Trustee for
the Estate of Christine Persaud,

Plaintiff,

– against –

EUGENE F. LEVY

Defendant.

**MEMORANDUM,
ORDER, AND
JUDGMENT**

12-MC-473



JACK B. WEINSTEIN, Senior United States District Judge:

Plaintiff is the Chapter 7 Trustee for the estate of Christine Persaud. He brings claims for legal malpractice, negligence and breach of fiduciary duty arising out of a commercial dispute and subsequent arbitration proceeding involving Persaud. The defendant, who was Persaud's attorney at the arbitration proceeding, moves for dismissal on the pleadings pursuant to Federal Rule of Civil Procedure 12(b)(6).

In February 2009, in connection with a business dispute Persaud was served with a letter notifying her of a third-party's intent to arbitrate pursuant to a commercial agreement between Persaud and the third-party. Persaud retained defendant to represent her in the arbitration.

Rather than appear at the arbitration, defendant filed objections orally on the telephone as to the arbitrator's jurisdictional authority over the dispute. *See* Ex. A, Mot. to Withdraw Ref., *Pereira v. Levy*, 12-MC-473 (E.D.N.Y. July 18, 2012), CM/ECF No. 1-1, ("Ex. A."), at ¶ 14. Alleged is that the attorney was subsequently informed by the arbitrator to appear and argue the merits of his objections in person at a hearing. He failed to do so and an award was issued against Persaud on March 31, 2009. *See* Ex. A ¶ 17.

With respect to the malpractice and other claims, the central issue is whether defendant, the attorney in the arbitration proceeding, caused harm to Persaud by failing to appear at the initial arbitration proceeding.

On April 17, 2009, the arbitration award was confirmed by order of the Supreme Court, King's County, by default. Ex. A ¶ 20.

Nearly one year after the award was confirmed, on May 26, 2010, Persaud filed a voluntary petition for bankruptcy. *See* Chapter 11 Voluntary Petition, *In re Christine Persaud*, No. 10-44815 (Bankr. E.D.N.Y. May 26, 2010), CM/ECF No. 1 (the case was subsequently converted to one under Chapter 7 of the bankruptcy code). The bankruptcy proceeding is ongoing.

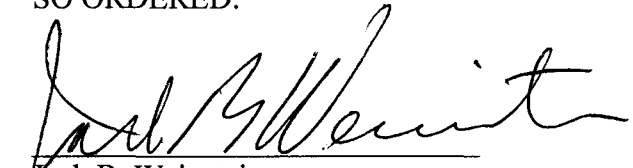
On May 20, 2011, the Supreme Court's decision to confirm the arbitration award was vacated by the Appellate Division of the Second Department. *See In the Matter of Klein v. Persaud*, 921 N.Y.S.2d 900 (2d Dep't 2011). The motion to confirm remains unresolved.

On July 18, 2012, the Trustee in the bankruptcy proceeding filed a motion to withdraw reference to the bankruptcy court. *See* Mot. to Withdraw Ref., *Pereira v. Levy*, 12-MC-473 (E.D.N.Y. July 18, 2012), CM/ECF No. 1. That motion was granted on January 30, 2013. *See* Order, *Pereira v. Levy*, 12-MC-473 (E.D.N.Y. July 18, 2012), CM/ECF No. 14.

Because the arbitration proceeding continues to make its way through the New York State court system, plaintiff's case is not ripe for consideration. It is not clear yet what, if any, damage was suffered by plaintiff. Defendant's motion to dismiss is granted.

The case is closed administratively. Upon a letter from either party, the case will be reopened.

SO ORDERED.



Jack B. Weinstein
Senior United States District Judge

Dated: February 1, 2013
Brooklyn, New York